

ORIGINAL

(51)
4-26-02
SC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRET T. CULVER,

Plaintiff

v.

COMMONWEALTH OF
PENNSYLVANIA, et al.,

Defendants

No. 1:01-CV-0904
(Judge Kane)

FILED
HARRISBURG

APR 25 2002

MARY E. D'ANDREA, CLERK
Per: [Signature]
DEPUTY CLERK

MOTION TO FILE DEPARTMENT OF CORRECTIONS
MOTION TO DISMISS AND SUPPORTING
BRIEF, NUNC PRO TUNC

Defendants, Pennsylvania Department of Corrections, by their attorneys hereby request the Court to permit them to file a motion to dismiss and supporting brief, nunc pro tunc.


1. The Court ordered service of the complaint on December 19, 2001, and defendants waived service of the complaint on January 11, 2002.
2. Defendants Miknich, Shannon, Dotter, Chismar, Kane, Mooney, Horn and Beard filed an answer to the complaint on February 20, 2002.

3. On April 22, 2002 undersigned counsel received several pleadings from the plaintiff. During her review of the pleadings, counsel for defendants became aware that the Commonwealth of Pennsylvania, Department of Corrections ("DOC") was named as a defendant in the caption of the complaint. Although no allegations are made against the DOC in the complaint, the DOC remains in the caption of the complaint.
4. Inadvertently, undersigned counsel failed to file a motion to dismiss and supporting brief on behalf of the DOC when the answer filed on February 20, 2002.
5. Undersigned counsel now seeks to file a Motion to Dismiss pursuant to 12(b)(6) and supporting brief on behalf of the DOC, for failure to state a claim upon which relief can be granted.

WHEREFORE, defendants motion to file a Motion to Dismiss and supporting brief nunc pro tunc should be granted.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: 
MARYANNE M. LEWIS
Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

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DATE: April 25, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BRET T. CULVER,

Plaintiff

v.

**COMMONWEALTH OF
PENNSYLVANIA, et al.,**

Defendants

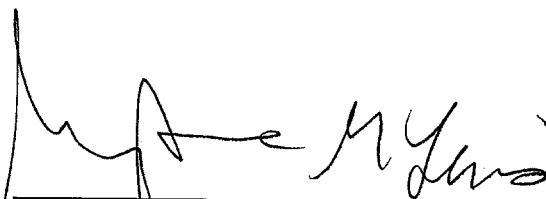
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**No. 1:01-CV-0904
(Judge Kane)**

CERTIFICATE OF SERVICE

I, Maryanne M. Lewis, Deputy Attorney General, hereby certify that on this date I caused to be served the foregoing Motion to File Department of Corrections Motion to Dismiss and supporting Brief, Nunc Pro Tunc, by depositing a copy of the same in the United States mail, postage prepaid, in Harrisburg, PA., addressed to the following:

Brett T. Culver, #DD 3483
SCI-Mahanoy
301 Morea Rd.
Frackville, PA 17932



**MARYANNE M. LEWIS
DEPUTY ATTORNEY GENERAL**

DATE: April 25, 2002